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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,772	09/19/2005	Derek Michael Auret	10338-22US (12553300ALC)	7881
570 7590 07/20/2007 AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103			EXAMINER KENNEDY, JOSHUA T	
			ART UNIT 3679	PAPER NUMBER
			MAIL DATE 07/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/549,772	Applicant(s) AURET, DEREK MICHAEL	
	Examiner Joshua T. Kennedy	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,7 and 9-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-123 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,7 and 9-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20050919</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 14-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/5/2007.

Examiner notes that a further election of species requirement is not proper at this time since no mutually exclusive claims have been presented. In this regard, it should be noted that the claims are drawn to the panel of the fence having deformed portions of pickets per se. Should the claimed invention begin to separately define the various species, applicant should note that the propriety of an election requirement will be revisited at that time. Note MPEP 811.

Claims 1, 3, 6-7, and 9-13 have been examined.

Claims 2, 4, 5, and 8 have been cancelled.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 7, and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Souza, Jr. (US Patent 3,357,681).

As to Claim 1. Souza, Jr. discloses a panel (Fig 1) for a fence having at least one hollow rail (16) and a plurality of pickets (31) supported by the rail, wherein the pickets enter the rail by passage through respective entry apertures in the rail (Fig 3), and a portion (33) of each picket located inside the rail is deformed to thereby prevent further passage of the pickets through their respective entry apertures (Col 3, Lines 59-62).

As to Claim 3. Souza, Jr. discloses the portion (33) of each picket that has been deformed within the rail has a partly flattened shape that no longer matches the shape of the respective entry aperture in the rail (Fig 14; Col 3, Lines 59-62).

As to Claim 6. Souza, Jr. discloses the pickets pass through only one side of the rail and end at an internal wall (20) within the rail, end portions of the pickets being held in respective apertures (22) of the internal wall (Fig 14).

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As to Claim 7. Souza, Jr. discloses a panel for a fence having at least one hollow rail (16) and a plurality of pickets (31) supported by the rail, wherein the rail has an external rail (16) with entry apertures for the pickets (Fig 3), and internal wall (20) for holding end portions of the pickets, and wherein each picket enters the rail through a respective entry aperture and has an end portion which is held by a corresponding holding aperture in the internal wall (Fig 14).

As to Claim 9. Souza, Jr. discloses the holding apertures being aligned with the entry apertures so that the pickets are perpendicular to the rail (Fig 14).

As to Claim 10. Souza, Jr. discloses the holding apertures are aligned with the entry apertures so that the pickets are not perpendicular to the rail (Col 2, Lines 7-14).

As to Claim 11. Souza, Jr. discloses the internal wall (20) being moveable within the rail to vary the alignment of the holding apertures and the entry apertures.

As to Claim 12. Souza, Jr. discloses the holding apertures (22) being formed by a plurality of flanges which receive end portions of respective pickets (Examiner considers the portion of the internal wall (20) between the apertures (22) to be flanges).

As to Claim 13. Souza, Jr. discloses the pickets being fastened to the rail by a deformed portion (33) of each picket within the rail.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 1070814, 1114486, 1234674, 1236185, 1791680, 2614827, 3244406, 3522933, 3822053, 4146212, 4451025, 6254064 and US Patent Application Publications 2006/0214149 and 20070015390 showing similar fences.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua T. Kennedy whose telephone number is (571) 272-8297. The examiner can normally be reached on M-F: 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTK

7/12/2007



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